IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1156 OF 2004

Prakash Shaniwar Dudhkar ..Petitioner

versus

The State of Maharashtra

& Ors. ..Respondents

Mr. V. V. Purwant i/b. R. D. Suryavanshi for the Petitioner.

Mr. A. S. Gadkari A.P.P. for Respondents.

CORAM : A.M. KHANWILKAR,J.

DATE : 14TH OCTOBER 2004.

P.C. :

1. Heard counsel for the parties. Only two contentions have been raised before me. The first point argued is that the appellate authority has rested its decision solely on the ground that the petitioner was allegedly involved in offence registered as CR No.325 of 2003 which was committed during the pendency of externment proceedings. It is argued that the basis on which the appellate authority proceeded to decide the matter was non-existant; because the said offence was registered prior to initiation of the proceedings. In as much as the offence was registered on 30.4.2003, whereas

show cause notice for initiating proceedings under Section 56 of the Bombay Police Act was issued on 20.11.2003. Even though there is substance in this grievance, the fact remains that the appellate authority has then adverted to other materials on record and found that there is no infirmity in the conclusion reached by the externing authority. To my mind, it is not possible to accept the submission that the order of the appellate authority is only founded on one ground, viz. registration of C.R. No.325 of 2003 during the pendency of the externment proceedings as is contended. It is seen that show cause notice adverts to several aspects and after reply was submitted by the petitioner, upon considering the same, the externing authority recorded its satisfaction that the petitioner deserves to be externed in terms of Section 56(a) and (b) of the Act. That view has been confirmed by the appellate authority. Therefore, no fault can be found either with the approach or the conclusion reached by the Authorities below.

2. Second contention raised before me is that the area from which the petitioner is directed to remove himself is excessive. It is argued that the petitioner was resident of Ambernath in District Thane and the activities are also stated to be in and around the said area. In such a situation, it was inappropriate to extern the petitioner from the

area of Thane District, Bombay, Bombay Subruban & Raigad District. It is therefore argued that the order of externment is excessive and deserves to be set aside. This submission clearly overlooks the fact that in the show cause notice it is clearly mentioned that it is necessary to extern the petitioner from the three districts because the three districts are contiguous and having regard to the nature of activities of the petitioner. Besides the consistent view taken by this court is that in such circumstances area of externment cannot be said to be excessive having regard to the peculiar topography of the area surrounding Thane District and Greater Bombay. In the case of **Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, State of Maharashtra reported in AIR 1973 Supreme Court 630**, this aspect has been dealt with at **paragraphs** 17 and 18. The Supreme Court has approved the consistent approach of the Bombay High Court that externment orders on the ground that they extended not only to the district of Greater Bombay but to the district of Thana as well, cannot be set aside. The Supreme Court has adverted to the decision of this court in Balu Shivling's case and approved that approach of this Court. This decision clearly answers the grievance made on behalf of the petitioner that the order of externment is excessive. To get over this position, counsel for the petitioner had placed reliance on the decision

of our High Court reported in **2003 ALL MR (Cri) 2023 Mr. Kishor Rajaram Durge vs. The Deputy Commissioner of Police & ors..** However in this judgment the principle stated by the apex court in Pandharinath's case, which is referred to above, is not adverted to. Reliance was also placed on the decision of our High Court in the case of Punjaju Dagadu Gaikwad vs. The State of Maharashtra reported in 2001(3) Mh.L.J. 926 to contend that this court while adverting to the decision in Pandharinath's case (supra) has set aside the externment order being excessive. However, in that case the petitioner was externed not only from District Buldhana but also from districts of Akola, Washim, Jalna, Parbhani and Jalgaon. The High Court recorded a finding that there was no matieral on record to justify externment from Districts of Akola, Washim, Jalna and Parbhani for which reason it interferred with the externment order. However, in the case of Pandharinath, just as in the present case, the petitioner is resident of Ambarnath which is in District Thane neighbouring suburban district having close connectivity which is a distinguishing feature. In this view of the matter no ground for interference, dismissed.

A.M. KHANWILKAR, J.